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Responsibility of States for internationally wrongful acts

Report of the Sixth Committee

Rapporteur: Mr. Isaias **Medina** (Bolivarian Republic of Venezuela)

I. Introduction

1. The item entitled "Responsibility of States for internationally wrongful acts" was included in the provisional agenda of the seventy-first session of the General Assembly pursuant to Assembly resolution 68/104 of 16 December 2013.

2. At its 2nd plenary meeting, on 16 September 2016, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 9th, 31st and 33rd meetings, on 7 October and on 4 and 11 November 2016. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

4. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General transmitting comments and information received from Governments (A/71/79);

(b) Report of the Secretary-General containing a compilation of decisions of international courts, tribunals and other bodies (A/71/80).

5. At its 1st meeting, on 3 October 2016, the Committee decided, pursuant to General Assembly resolution 68/104, to establish a working group on the responsibility of States for internationally wrongful acts, in order to fulfil the mandate conferred by the Assembly on the Committee, namely, to further examine the question of a convention on the topic or other appropriate action on the basis of

[1] A/C.6/71/SR.9, A/C.6/71/SR.31 and A/C.6/71/SR.33.

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the articles drafted by the International Law Commission. At the same meeting, the Committee decided to open the Working Group to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency. The Working Group, which was chaired by Mr. Patrick Luna (Brazil), held three meetings, on 13, 19 and 21 October 2016.

6. At its 31st meeting, on 4 November, the Committee heard and took note of the oral report of the Chair of the Working Group.

II. Consideration of draft resolution A/C.6/71/L.28

7. At the 33rd meeting, on 11 November, the representative of Brazil, on behalf of the Bureau, introduced a draft resolution entitled "Responsibility of States for internationally wrongful acts" (A/C.6/71/L.28).

8. At the same meeting, the Committee adopted draft resolution A/C.6/71/L.28 without a vote (see para. 9).

III. Recommendation of the Sixth Committee

9. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Responsibility of States for internationally wrongful acts

The General Assembly,

Recalling its resolution 56/83 of 12 December 2001, the annex to which contains the text of the articles on responsibility of States for internationally wrongful acts, and its resolutions 59/35 of 2 December 2004, 62/61 of 6 December 2007, 65/19 of 6 December 2010 and 68/104 of 16 December 2013 commending the articles to the attention of Governments,

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (*a*), of the Charter of the United Nations,

Noting that the subject of responsibility of States for internationally wrongful acts is of major importance in relations between States,

Taking into account the comments and observations of Governments[1] and the discussions held in the Sixth Committee, at the fifty-sixth, fifty-ninth, sixty-second, sixty-fifth, sixty-eighth and seventy-first sessions of the General Assembly, on responsibility of States for internationally wrongful acts,

Noting with appreciation the compilation of decisions of international courts, tribunals and other bodies referring to the articles, prepared by the Secretary-General,[2]

Noting the discussion on whether Member States should examine all procedural options regarding possible action on the basis of the articles,

1. *Acknowledges* that a growing number of decisions of international courts, tribunals and other bodies refer to the articles on responsibility of States for internationally wrongful acts;[3]

2. *Continues to acknowledge* the importance and usefulness of the articles, and commends them once again to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action;

3. *Requests* the Secretary-General to invite Governments to submit further written comments on any future action regarding the articles;

4. *Also requests* the Secretary-General to prepare a technical report listing, in a tabular format, the references to the articles contained in the compilation of decisions of international courts, tribunals and other bodies referring to the articles prepared since 2001, as well as references to the articles made in submissions presented by Member States before international courts, tribunals and other bodies

[1] See A/62/63 and Add.1, A/65/96 and Add.1, A/68/69 and Add.1 and A/71/79.
[2] See A/62/62 and Corr.1 and Add.1, A/65/76, A/68/72 and A/71/80.
[3] Resolution 56/83, annex.

since 2001, and further requests the Secretary-General to submit such material during its seventy-first session;

5. *Acknowledges* the possibility of requesting, at its seventy-fourth session, the Secretary-General to provide the General Assembly with information on all procedural options regarding possible action on the basis of the articles, without prejudice to the question of whether such possible action is appropriate;

6. *Requests* the Secretary-General to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard, and also requests the Secretary-General to submit such material well in advance of its seventy-fourth session;

7. *Acknowledges* the constructive dialogue in the context of the working group of the Sixth Committee during the seventy-first session of the General Assembly, and encourages all Member States to continue the substantive dialogue on an informal basis during the period prior to the seventy-fourth session of the Assembly;

8. *Decides* to include in the provisional agenda of its seventy-fourth session the item entitled "Responsibility of States for internationally wrongful acts" and to further examine, within the framework of a working group of the Sixth Committee and with a view to taking a decision, the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles.